

EHB 2187

ENGROSSED

House Bill No. 2187

As Amended

ENGROSSED HOUSE BILL NO. 2187 - By: CAREY of the House and GUMM of the Senate.

[insurance - affidavit - codification - effective date]

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5005.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Mortgage" means a contract lien on an interest in real property;

2. "Mortgagee" means

a. the grantee of a mortgage,

b. if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record, or

c. if a mortgage is serviced by a mortgage servicer, the mortgage servicer;

3. "Mortgage servicer" means the last person to whom a mortgagor has been instructed by a mortgagee to send payments for the loan secured by a mortgage. A person transmitting a payoff

1 statement is considered the mortgage servicer for the mortgage
2 described in the payoff statement;

3 4. "Mortgagor" means the grantor of a mortgage;

4 5. "Payoff statement" means a statement of the amount of:

5 a. the unpaid balance of a loan secured by a mortgage,
6 including principal, interest, and other charges
7 properly assessed under the loan documentation of the
8 mortgage, and

9 b. interest on a per diem basis for the unpaid balance;
10 and

11 6. "Title insurance company" means a corporation or other
12 business entity authorized and licensed to transact the business of
13 insuring titles to interests in real property in this state.

14 B. This section applies only to a mortgage on property
15 consisting exclusively of a one-to-four-family residence, including
16 a residential unit in a condominium regime.

17 C. If a mortgagee fails to execute and deliver a release of
18 mortgage to the mortgagor or to the designated agent of the
19 mortgagor within sixty (60) days after the date of receipt of
20 payment of the mortgage by the mortgagee in accordance with a payoff
21 statement furnished by the mortgagee or its mortgage servicer, an
22 authorized officer of a title insurance company, on behalf of the
23 mortgagor or a transferee of the mortgagor who acquired title to the

1 property described in the mortgage, may execute an affidavit that
2 complies with the requirements of this section and record the
3 affidavit in the real property records of each county in which the
4 mortgage was recorded.

5 D. An affidavit executed under this section shall state that:

6 1. The affiant is an authorized officer of a title insurance
7 company;

8 2. The affidavit is made on behalf of the mortgagor or a
9 transferee of the mortgagor who acquired title to the property
10 described in the mortgage;

11 3. The mortgagee provided a payoff statement with respect to
12 the loan secured by the mortgage;

13 4. The affiant has ascertained that the mortgagee has received
14 payment of the loan secured by the mortgage in accordance with the
15 payoff statement, as evidenced by:

16 a. a bank check, certified check, cashier's check, escrow
17 account check from the title company or title
18 insurance agent, or attorney trust account check that
19 has been negotiated by the mortgagee, or

20 b. another documentary evidence of the receipt of payment
21 by the mortgagee;

22 5. More than sixty (60) days have elapsed since the date
23 payment was received by the mortgagee;

1 6. The title insurance company or its agent has given the
2 mortgagee at least fifteen (15) days' notice in writing by certified
3 mail of its intention to execute and record an affidavit in
4 accordance with this section, with a copy of the proposed affidavit
5 attached to the written notice; and

6 7. The mortgagee has not responded in writing to the
7 notification, or a request for additional payment made by the
8 mortgagee has been complied with at least fifteen (15) days before
9 the date of the affidavit.

10 E. The affidavit must include the names of the mortgagor and
11 the mortgagee, the date of the mortgage, the legal description of
12 the property, and the book and page or clerk's document number of
13 the real property records where the mortgage is recorded, together
14 with similar information for a recorded assignment of the mortgage.

15 F. The affiant shall attach to the affidavit a photostatic
16 copy, certified as a true copy of the original document, of:

17 1. The documentary evidence that payment has been received by
18 the mortgagee, including the endorsement of the mortgagee of a
19 negotiated check if paid by check; and

20 2. The payoff statement.

21 G. An affidavit that is executed and recorded as provided by
22 this section shall operate as a release of the mortgage described in
23 the affidavit.

1 H. The county clerk shall index the affidavit against the real
2 property described in the mortgage and the affidavit.

3 I. A person who knowingly causes an affidavit with false
4 information to be executed and recorded under this section is liable
5 for the penalties for filing a false affidavit, including the
6 penalties for commission of offenses pursuant to appropriate section
7 of the penal code, and to a party injured by the affidavit for
8 actual damages or Five Thousand Dollars (\$5,000.00) whichever is
9 greater. The Attorney General may sue to collect the penalty. If
10 the Attorney General or an injured party bringing suit substantially
11 prevails in an action under this subsection, the court may award
12 reasonable attorney fees and court costs to the prevailing party.

13 J. Nothing provided for in this section shall preclude the
14 mortgagor from availing itself of the remedies provided for in
15 Section 15 of Title 46 of the Oklahoma Statutes which provides for
16 penalties against the mortgagee for failure to release a mortgage
17 pursuant to the payment in full and request for release on behalf of
18 the mortgagor.

19 SECTION 2. This act shall become effective November 1, 2004.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-30-04 - DO
21 PASS, As Amended.